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SUBJECT: UNGA: GENERAL ASSEMBLY DEBATE ON OCEANS AND THE LAW OF THE SEA

¶1. (U) Summary: The 63rd UN General Assembly held its debate on agenda item 70, "Oceans and the Law of the Sea," on December 4. The General Assembly considered two resolutions relating to this agenda item, both of which were co-sponsored by the United States. The resolution on Oceans and the Law of the Sea (A/63/L.42) was adopted by vote, and the sustainable fisheries resolution was adopted by consensus. As the sustainable fisheries resolution had been coordinated by Holly Koelher (OES) of the Department, the United States introduced that resolution. Paragraph 19 lists the countries that gave statements. End Summary.

Straits Issue

¶2. (U) Singapore made sharply worded remarks on straits used for international navigation. Referring to the Law of the Sea Convention (the Convention), Singapore asserted that the "balance enshrined in Article 42 is coming under assault" and noted that "Singapore, like several other countries, takes issue with the unilateral implementation of the mandatory pilotage scheme in the Torres Strait." Singapore said that it was "convinced that such steps are contraventions of international law," and asserted that "the precedent set in the Torres Strait can be replicated anywhere, including in some of the busiest waterways in the world."

¶3. (U) Australia said that there was a great risk of a major incident in the Torres Strait, a unique and sensitive ecosystem. Australia asserted that the system of pilotage that it and Papua New Guinea put in place is a necessity and "entirely consistent with international law, including the Convention." Australia said that it disagreed with the assertion that the Torres Strait scheme sets a precedent that can be replicated anywhere, in that it was based on an International Maritime Organization designation.

¶4. (U) Singapore, exercising its right of reply, stated that Australia's compulsory pilotage scheme "goes beyond what is permitted by Article 42 of the Convention." Singapore asserted that Australia's compulsory pilotage system in the Torres Strait does not have IMO approval. Many States, including the United States, emphasized the importance of freedom of navigation and the rights of transit passage, in addition to the rights and responsibilities of States bordering straits used for international navigation.

Commission on the Limits of the Continental Shelf

¶5. (U) Several States made remarks about the Commission on the Limits of the Continental shelf. China welcomed the resolution adopted by the 18th Meeting of States Parties to the Law of the Sea Convention (SPLOS) regarding the time period for submissions to the Commission, saying that the resolution had accommodated the concerns of developing countries while appropriately reducing the burden and pressure on the Commission. Norway stated that "all states

concerned should be able to comply with the 2009 deadline" for submissions to the Commission, and noted that it is funding the UNEP shelf program, which is coordinated by GRID-Arendal, with a view to promoting capacity-building and making relevant data available to States. Many delegations called for increased funding for the Division for Ocean Affairs and the Law of the Sea as the volume of the Commission's work continues to increase.

¶6. (U) Kenya spoke at great length about a "dilemma" it faces regarding the proper interpretation and application of some aspects of the Convention relating to continental shelf, and in particular to application of the formulae contained in the Convention. Kenya suggested that the "Statement of Understanding," which many had interpreted to apply only to the Bay of Bengal, should also apply to other geographic areas.

Open-Ended Informal Consultative Process (ICP)

¶7. (U) Some delegations praised the ICP process, but expressed regret that the ICP mandate had only been renewed for two years, conveying disappointment that next year's consultations would be limited to a review of the ICP process itself. (Comment. The G-77 and China during the informal consultations successfully pushed hard for this result. End comment.) Iceland regretted that "certain member States were unwilling to renew the mandate" of the ICP for three years and to agree on a substantive topic for next year, going so far as to say that "the informal consultations on the two resolutions this year were not held in the same spirit of cooperation that has characterized work on oceans and the law

of the sea here at the United Nations, including the Third Law of the Sea Conference."

¶8. (U) Other delegations criticized the ICP process. Argentina claimed that the evolution of the ICP into a forum with a "double nature" (information and negotiation) results in its being inadequate at either, suggesting that in the future text should not be negotiated there. China supported a stronger focus on sustainable development.

Piracy and Armed Robbery at Sea

¶9. (U) Several States expressed deep concern about recent incidents of piracy and armed robbery at sea off the coast of Somalia, and welcomed the recent Security Council resolutions addressing this issue. Some States, such as Indonesia and India, took pains to point out that Security Council resolutions 1816, 1836 and 1846 did not affect the rights, obligations or responsibilities of Member States under international law, including any rights or obligations under the Law of the Sea Convention, and in particular that they do not establish customary international law.

Sustainable Fisheries Resolution

¶10. (U) Several countries expressed concern about continuing over-fishing, illegal fishing and destructive fishing practices. Some countries, such as Australia, were encouraged by the progress in agreeing to set out precautionary reference points to sustain fish stocks.

¶11. (U) Many speakers emphasized the need for more countries to ratify the UN Fish Stocks Agreement. Other States, such as Cuba, while accepting major conservation and management provisions of the Fish Stocks Agreement, expressed concern about the mechanism of visits and inspection on board fishing vessels, as established by articles 21 and 22. Several delegations welcomed the opportunity to exchange views in the informal dialogue on the Fish Stocks Agreement scheduled for **¶2009.**

¶12. (U) Several States, such as Canada and Australia, recalled the commitment made in Resolution 61/105 to regulate bottom fishing and to manage the impact of fishing on vulnerable marine ecosystems, welcomed measures that have been taken so far and urged States and Regional Fisheries Management Organizations to expedite efforts for further implementation.

¶13. (U) Several States noted the importance of port States preventing illegal, unregulated or unreported catch from entering ports or reaching the market, and praised efforts at the Food and Agriculture Organization to negotiate a binding port State instrument.

¶14. (U) Argentina pointed out that the sedentary resources of the continental shelf are subject to the sovereignty rights of coastal States over the entirety of the continental shelf, and to reaffirm this point it had proposed operative paragraph 104 of the sustainable fisheries resolution.

¶15. (U) Many delegations praised by name the State Department's Holly Koelher (OES) for her deft coordination of the sustainable fisheries resolution.

Action on the Resolutions

¶16. (U) As in the past, the oceans resolution was adopted by vote. The vote was 155-1(Turkey)-4(Venezuela, El Salvador, Colombia and Libya). After voting concluded, Bolivia intervened to say that it had intended to vote "yes" but the voting button malfunctioned. The sustainable fisheries resolution was adopted by consensus.

¶17. (U) Venezuela, in its explanation of vote, noted that it is not a party to the Law of the Sea Convention and thus is not bound by its terms. Argentina, in its explanation, noted that it is not a party to the Fish Stocks Agreement and thus is not bound by its terms. Turkey, in its explanation, observed that the Law of the Sea Convention does not make provisions for special geographic circumstances. Turkey also objected to the resolution's call for States to become party to the Convention and to harmonize their legislation with the Convention's provisions. Turkey disassociated itself from the sustainable fisheries resolution, as it is not a party to the Fish Stocks Agreement.

¶18. (U) In statements read before each of the two

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resolutions were adopted, the Secretariat reported that no financial implications would arise under the program budget for the biennium 2008-2009.

¶19. (U) The following countries made interventions: Brazil (to introduce resolution A/63/L.42), the United States (to introduce resolution A/63/L.43), France (on behalf of the European Union), Jamaica (on behalf of the Caribbean Community), Palau (on behalf of the Pacific Islands Forum), Argentina, Canada, China, Cuba, Egypt, Fiji, Guatemala, Iceland, India, Indonesia, Korea, Japan, Kenya, Kuwait, Marshall Islands, Mexico, Monaco, Norway, Peru, Russia, Singapore, Sri Lanka, Ukraine, Tanzania, Tunisia, Venezuela, and Vietnam. The following observers also gave statements: International Tribunal of the Law of the Sea, International Seabed Authority.

Khalilzad